IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2039 of 2001

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI
and
Hon'ble MR.JUSTICE RAVI R.TRIPATHI

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MAGANLAL V THAKKER

Versus

SALES TAX OFFICER (3) CITY DIV -5 OR SUCCESSOR

Appearance:
MR NAYAN A SHETH for Petitioner No. 1
MR ND GOHIL AGP for Respondent No. 1-5

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI
and
MR.JUSTICE RAVI R.TRIPATHI

Date of decision:11/10/2001

C.A.V. JUDGEMENT

(Per : CHIEF JUSTICE MR DM DHARMADHIKARI)

#. The petitioner has established a new industry in the

name of M/s. Shraddha Wires in the backward area of GIDC Estate, Post - Ramangamadi, District : Vadodara. The industry is engaged in manufacture of M.S. Coated Wires and Uncoated Wires by processing the iron wires. The Industrial Unit has been granted certificate for sales tax exemption in terms of Entry 255 of the Notification issued under Section 49(2) of the Gujarat Sales Tax Act. The relevant part of the Entry 255 granting conditional sales tax exemption to new industrial units in backward areas in its relevant part reads:-

"Conditions:-

1. The eligible unit shall

(a) In the case where the eligibility certificate has been obtained from the appropriate authority before 120 days from the date of this notification, and

(b) in other cases within 120 days from the date of receipt of the Eligibility Certificate - apply to the competent authority for the grant of a certificate of exemption.

2. Such an application shall be accompanied by the original Eligibility Certificate issued to the industrial unit by the appropriate authority.

3. If the unit applies for the grant of the Certificate of Exemption after the expiry of the time limit specified in condition 1, the certificate of the exemption shall be given effective from the date on which the application is received by the competent authority. In such a case the certificate of exemption shall be issued without changing the time upto which the exemption is admissible. In case where the application is received within the specified time limit, the certificate of exemption shall be made effective from the date mentioned in the Eligibility Certificate:

Provided that the competent authority, on being satisfied that application for certificate exemption could not be submitted within the time limit specified in condition (1) due to the circumstances beyond the control of the eligible unit, may condone the delay.

The certificate of exemption shall contain details regarding the date from which the exemption starts, the quantum of sales tax exemption and the time upto which the exemption is admissible as shown in the Eligibility Certificate issued by the appropriate authority of the Industries Department.

4. The eligible unit may at its option request that the certificate of exemption be made effective from the date subsequent to date mentioned in the eligibility certificate. In such a case, the certificate of exemption shall be issued accordingly without changing the time upto which the exemption is admissible."

#. In terms of the conditions quoted above in Entry 255 of the exemption Notification, the unit which possesses the Eligibility Certificate has to apply for grant of sales tax exemption within 120 days from the date of receipt of the Eligibility Certificate. In the present case, the date of production was 18-2-1994 and the Eligibility Certificate was issued on 12-11-1996. The petitioner for the Industrial Unit did not make any application within the prescribed period of 120 days. The application for grant of Exemption Certificate was made to the Asst. Commissioner of Sales Tax on 15-6-1998, i.e. almost after one year three and half months. The Asst. Commissioner of Sales Tax (respondent no. 2) granted Exemption Certificate dated 3-5-1999 to be effective from 15-6-1998 i.e., date of making application for exemption and the Certificate is valid upto 17-2-2000. As the petitioner's application for grant of Exemption Certificate from 18-2-1994 when the production started in the unit was not granted, the petitioner preferred Appeals to the Gujarat Sales Tax Tribunal and the Tribunal by judgment dated 10-11-2000 dismissed his Appeal. As a result of grant of Exemption Certificate only from 15-6-1998, the petitioner was assessed to sales tax and interest for the period from 9-7-1993 to 31-3-1994 and 1-4-1994 to 31-3-1995. The Assessing Officer by orders of assessment dated 17-12-1999 and 31-12-1999 rejected the petitioner's claim for sales tax exemption and levied tax, penalty and interest. The petitioner against the assessment of sales tax then preferred appeals to the Asst. Commissioner of Sales Tax. Second Appeal No. 171 of 2000 was also preferred to Gujarat Sales Tax Tribunal, but the claim for Sales Tax Exemption was rejected by the Tribunal by its order dated 10-11-2000.

#. Aggrieved by the action of the Sales Tax Authorities in refusing to grant sales tax exemption from 18-2-1994 and assessing the petitioner to tax, penalty and interest this Writ Petition has been preferred.

#. At the outset, it may be mentioned that the question of the vires of the provisions of Section 47(4)(A) and (B) of the Gujarat Sales Tax Act, being a provision on

levying of interest has been raised, in view of the fact that similar question raised in Special Civil Applications Nos. 9961 and 9962 of 1994 were pending in this Court. The learned counsel appearing for the petitioner, however, did not raise any substantial ground of vires of the aforesaid provision and the Court therefore is not required to deal with the same.

#. On the question of non-grant of exemption certificate from initial date of the production of the unit i.e. 18-2-1994, learned counsel submits that under proviso to condition No.3 (quoted above) of Entry 255, the competent authority could condone the delay on sufficient cause for not making application for exemption within the prescribed time of 120 days. On behalf of the petitioner the submission made is that the petitioner throughout remained inactive under the misunderstanding that on the grant of Eligibility Certificate the Sales Tax Department itself shall issue an Exemption Certificate.

#. The argument advanced on behalf of the petitioner is that the provisions and conditions under Entry 255 of the Exemption Notification should be construed so as to achieve the object for which the exemption was granted to industrial units in backward areas. Learned counsel argues that the petitioner should not be penalised for a procedural lapse of making an application for exemption late. The conditions Nos. 1(A) and 1(B) in Entry 255 are relating to matter of procedure and mere delay in making application should not come in the way of doing substantial justice. Strong reliance has been placed on the decision of the Supreme Court in the case of Collector, Land Acquisition, Anantnag and another v. Mst. Kajiji and others (1987) 66 STC 228 where the expression "sufficient cause" in Section 5 of the Limitation Act permitting condonation of delay in making applications, has been liberally construed to advance the cause of justice.

#. The respondents representing the Sales Tax Department of the State of Gujarat have opposed the Petition. A reply affidavit has been filed stating that the petitioner who had obtained the Eligibility Certificate in terms of conditions contained in Entry 255 of the Exemption Notification cannot be believed to be unaware that within the prescribed time limit he had an option to obtain certificate for sales tax exemption. It is submitted that the party claiming eligibility and exemption is expected to know the terms and conditions of the Notification in Entry 255 under which the Eligibility Certificate for the unit and exemption from sales tax has

to be obtained. Learned counsel appearing for the Sales Tax Department submits that the cause shown by the petitioner for delay in making application for more than period of one year is on the face of it unworthy of acceptance. No prudent man carrying on business and conscious of sales tax liabilities would think that on grant of Eligibility Certificate, grant of Exemption Certificate would necessarily follow without seeking any such exemption. An additional affidavit has been filed by the respondents and along with it a copy of the show cause notice issued on 4-1-1999 to the petitioner has been annexed. It is pointed out from the contents of the show cause notice that the petitioner was called upon to clarify or explain as to why application for grant of exemption was not made within the prescribed period of 120 days from the date of receipt of Eligibility Certificate. It is submitted that despite service of the show cause notice dated 4-1-1999 on the petitioner he failed to make any application for seeking condonation of delay.

#. After hearing the learned counsel for the petitioner and the learned counsel for the State we find no ground to grant any relief to the petitioner. Condition No.1(B) r.w. proviso in condition no.3 of Entry 255 is very clear that the application for grant of certificate of exemption has to be made within 120 days from the date of receipt of Eligibility Certificate and if there is a delay the same can be condoned by the competent authority only on being satisfied that the application for certificate could not be submitted within the prescribed time `due to the circumstances beyond the control of the eligible unit'. In the instant case, the excuse given by the petitioner is that he remained idle under a misunderstanding that grant of Eligibility Certificate would necessarily follow the grant of Exemption Certificate. Such a stand or excuse is on the face of it ludicrous and unacceptable. If the petitioner for his unit had applied for Eligibility Certificate he must have been aware of the conditions and requirement of the time limit for obtaining exemption certificate. The Eligibility Certificate and Exemption Certificate constitute part of the same Notification of concession and exemption granted under Section 49(2) of the Act. The petitioner made the Application after delay of more than a period of one year and yet did not make any application for condonation, despite the fact that he was granted an additional opportunity by show cause notice dated 4-1-1999 served on him to explain or clarify the cause of delay.

#. Reliance on the decision of Supreme Court in the case of Mst. Katiji (supra) on liberal interpretation of the words "sufficient cause" in Section 5 of the Limitation Act is misplaced and is of no help to the petitioner in this case. Under Section 5 of the Limitation Act "on a sufficient cause" Court can extend the period prescribed for making an application. Under proviso to condition no.3 of Entry 255, under consideration before us, the delay in making application for grant of certificate of exemption can be condoned only on satisfaction of the competent authority that the application for certificate could not be filed by the unit "under the circumstances beyond the control of the eligible unit". The aforesaid words "circumstances beyond the control of the eligible unit" cannot be liberally construed even after taking into consideration the object of the scheme of concession and exemption in the Act and in same manner as the word "sufficient cause" used in Section 5 of the Limitation Act. As we have held above the explanation of the petitioner that he throughout remained under a misunderstanding that exemption certificate will naturally be granted by the Department on issuance of the eligibility certificate, is on the face of it a lame excuse and hence unacceptable. Such an excuse cannot be held to be a `circumstance beyond the control' of the petitioner as proprietor of the eligible unit.

##. Lastly learned counsel for the petitioner has pointed out that in the additional affidavit filed by the petitioner along with the documents it has been shown that for the period of assessment in question on an understanding that the unit is granted sales tax exemption, no sales tax was charged on the sale transactions of the unit from the customers. We need not go into that factual aspect of the matter whether the transactions effected by the petitioner were on market price inclusive of sales tax but without separately collecting sales tax or in fact the petitioner did not charge any sales tax from its customers. That factual enquiry is wholly irrelevant when the petitioner failed to obtain exemption certificate within the prescribed time limit as contained in the conditions in Entry 255 of Notification under Section 49 of the Act.

In the result of the aforesaid discussion, the

Petition fails and is hereby dismissed, but in the circumstances with no order as to costs.

(D.M. DHARMADHIKARI, C.J.)

(RAVI R. TRIPATHI, J)

[sndevu]